

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 6035**

**DATE COMPLAINT FILED: July 9, 2008**

**DATE OF NOTIFICATION: July 16, 2008**

**LAST RESPONSE RECEIVED:**

**September 8, 2008**

**DATE ACTIVATED: September 22, 2008**

**EXPIRATION OF SOL: June 15, 2010**

**COMPLAINANT:**

**Thomas Fitton, on behalf of Judicial Watch, Inc.**

**RESPONDENTS:**

**Northern Trust Company**

**Barack Obama**

**Obama 2010, Inc., and Harvey S. Weinberg,**  
**in his official capacity as treasurer**

**Obama for Illinois, Inc., and Harvey S. Weinberg,**  
**in his official capacity as treasurer (terminated)**

**RELEVANT STATUTES  
AND REGULATIONS:**

**2 U.S.C. § 441b(a)**

**2 U.S.C. § 431(8)(A)(i)**

**2 U.S.C. § 431(8)(B)(vii)**

**2 U.S.C. § 432(e)(2)**

**11 C.F.R. § 100.82(a)(1),(2),(3),(4)**

**11 C.F.R. § 100.153**

**INTERNAL REPORTS CHECKED:**

**Disclosure Reports**

**FEDERAL AGENCIES CHECKED:**

**None**

**I. INTRODUCTION**

The complaint alleges, based on an article in *The Washington Post*, that then-Senator Barack Obama and his wife Michelle Obama obtained a mortgage from Northern Trust Company ("Northern Trust") at a discounted interest rate, which resulted in a "disguised

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1 campaign contribution to [then-]Senator Obama of at least \$108,000." Complaint at 3. The  
2 complaint further alleges that the contribution was a prohibited corporate contribution and that  
3 neither then-Senator Obama's campaigns nor Northern Trust reported the contribution. *Id.*

4 As described in more detail below, there is no information suggesting a connection  
5 between the Obamas' mortgage and then-Senator Obama's campaigns, and moreover, the  
6 Obamas' loan is not a contribution because information provided by Northern Trust shows it was  
7 made in accordance with applicable law and in the course of ordinary business. Accordingly, we  
8 recommend the Commission find no reason to believe that Northern Trust and Barack Obama  
9 violated 2 U.S.C. § 441b(a) and no reason to believe Obama 2010, Inc. and Harvey S. Weinberg,  
10 in his official capacity as treasurer, and Obama for Illinois, Inc. and Harvey S. Weinberg, in his  
11 official capacity as treasurer, (terminated) violated 2 U.S.C. §§ 441b(a) and 434(b)(2).

## 12 **II. FACTUAL SUMMARY**

13 Then-Senator Barack Obama and Michelle Obama obtained a mortgage from Northern  
14 Trust on June 15, 2005, for \$1.32 million at a 5.67 percent interest rate, for the purchase of a  
15 \$1.65 million home on Chicago's south side. On July 2, 2008, *The Washington Post* published  
16 an article discussing then-Senator Obama's mortgage. Joe Stephens, *Obama Got Discount on*  
17 *Home Loan*, Wash. Post, July 2, 2008, at A03 ("Stephens article"). According to the article, the  
18 Obamas received a mortgage from Northern Trust at a discounted rate, lower than "the average  
19 offered at the time in Chicago for similarly structured jumbo loans." *Id.* Rates for similar loans  
20 during the same week averaged 5.93 percent to 6.0 percent, according to the story, and the lower  
21 rate may have saved the Senator more than \$300 a month. *Id.* A spokesman for then-Senator  
22 Obama, quoted in the article, said that the interest rate was adjusted to account for a competing  
23 offer from another lender and other factors. *Id.* The article quoted the Obama spokesman as

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1 saying "[t]he Obamas have since had as much as \$3 million invested through Northern Trust."

2 *Id.* The article noted that when the Obamas secured the loan, their income had risen  
3 dramatically, because Barack Obama assumed his Senate seat and received a \$2.27 million book  
4 deal from Random House, and Michelle Obama received a promotion to vice president at the  
5 University of Chicago Hospitals. *Id.* It stated, however, that the Obamas had no prior  
6 relationship with Northern Trust when they applied for the loan. *Id.* The article also quoted a  
7 Northern Trust official as stating that Northern Trust has no formal program to provide discounts  
8 to public officials, but a person's salary and occupation are two factors they take into  
9 consideration when anyone is seeking a mortgage at Northern Trust. *Id.* The official further  
10 stated that "[t]he bottom line is, this was a business proposition for us" and "our business model  
11 is to service and pursue successful individuals, families and institutions." *Id.*<sup>1</sup>

12 Based on the Stephens article, Judicial Watch filed a complaint with the Commission.  
13 The complaint states that the Stephens article reports that "the favorable interest rate would save  
14 [then-]Sen. Obama over \$300 a month, which over the life of the 30-year loan, would be at least  
15 \$108,000." Complaint at 2. In further quoting the article, the complaint states that "[t]he  
16 Obamas had no prior relationship with Northern Trust when they applied for the loan. They  
17 received an oral commitment on Feb. 4, 2005, and locked in the rate of 5.625 percent, the  
18 campaign said. On that date, HSH [HSH Associates, Financial Publishers] data show, the

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<sup>1</sup> The Stephens article was criticized by a later article in *The Washington Post* which stated that the Stephens article "had a negative cast to it and lacked the important context that other wealthy and savvy borrowers could have done as well under similar circumstances." Deborah Howell, *More Story Than a Loan Merited*, Wash. Post, July 13, 2008 at B06. The Stephens article was also criticized by an article in the *Columbia Journalism Review*, which questioned why *The Washington Post* ran the Stephens article because Stephens left the question of whether Obama's political position affected the details of his loan unanswered and "all that's left are a bunch of weak correlations." Justin Peters, *Behind Barack's "Suspicious" Mortgage*, Colum. Journalism Rev., July 2, 2008. These articles were attachments to the response from Northern Trust.

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1 average rate in Chicago for a 30-year fixed-rate jumbo loan with no points was about 5.94  
2 percent." *Id.*

3 The complaint asserts that the Stephens article suggests that then-Senator Obama  
4 received special treatment because he was a U.S. Senator, based on a quote in the article from  
5 Northern Trust Vice President John O'Connell reportedly stating that among the factors he  
6 would expect Northern Trust would consider in setting a mortgage rate is "a person's  
7 occupation." *Id.* at 2-3. The complaint further quotes the Stephens article as reportedly stating  
8 that since 1990, Northern Trust employees contributed \$71,000 to then-Senator Obama's  
9 political campaigns, including a \$1,250 contribution to then-Senator Obama's 2004 campaign for  
10 U.S. Senate. *Id.* at 3.

11 The complaint then alleges that, based on the information in the Stephens article,  
12 Northern Trust's discounted mortgage is actually a disguised campaign contribution to then-  
13 Senator Obama because at the time he secured his mortgage, it appears that he was raising funds  
14 for his 2004 and 2010 Senate campaigns. *Id.* It further alleges the \$108,000 contribution by  
15 Northern Trust, a \$300 a month "savings" over the life of the Obamas' 30-year mortgage loan  
16 based on the discounted rate, would violate federal laws because it is a corporate contribution,  
17 and should have been disclosed. *Id.*

18 The response from then-Senator Obama; Obama 2010, Inc., and Harvey S. Weinberg, in  
19 his official capacity as treasurer; and Obama for Illinois (terminated), states that the complaint is  
20 false and fails to allege any violation of a federal campaign finance law. Obama Response at 1.  
21 Specifically, it states that the complaint only asserts that the loan was "a good deal" and then  
22 jumps to the conclusion that it was a "disguised campaign contribution." *Id.* at 2. It asserts that

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1 the Obamas' mortgage loan was an arms-length transaction at a commercial rate, and was not  
2 made in connection with any federal election. *Id.*

3 The response from Northern Trust states that there was no connection between the  
4 mortgage and an election, and that even if there were a connection, the mortgage was not a  
5 contribution from Northern Trust. Northern Trust Response at 1. Attached to the response is an  
6 affidavit from Kathleen Soto, the Relationship Manager in the Private Client Services Division  
7 of Northern Trust who dealt with the Obamas. Soto Aff. ¶ 1. Her affidavit states that Northern  
8 Trust is a "financial services institution that focuses on, among other things, integrated personal  
9 wealth management solutions for successful individuals, families, foundations, etc., and looks to  
10 establish long-term financial relationships with these clients." *Id.* ¶ 2. She further notes that  
11 mortgage loans are "commonly provided as a service to our existing customers and as a way to  
12 introduce new and potential clients to the institution and familiarize them with the other services  
13 that the institution can provide." *Id.* ¶ 3. She states that her interactions with then-Senator  
14 Obama and Mrs. Obama began in early 2005, and

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29 *Id.* ¶ 4-5.  
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1 Karen L. Daley, a Senior Vice President in the Home Loan Center/Community Lending  
2 Unit at Northern Trust, also submitted an affidavit as part of Northern Trust's response. Daley  
3 Aff. ¶ 1. Ms. Daley states that she searched Northern Trust's records to locate all of the \$1  
4 million or more loans that had a 30-year term and a fixed interest rate, which were closed and  
5 funded during the period from January 1, 2005 to August 1, 2005. *Id.* ¶ 2. Ms. Daley avers that  
6 there were 14 mortgage loans that fit that criteria, and "of these 14, eight [including the Obamas'  
7 loan] were locked in at a 'discount' in the form of a reduction in the interest rate indicated on  
8 Northern Trust's internally produced 'rate sheet.' This rate sheet, which is published internally  
9 at Northern Trust at least daily, is the starting point used by Northern Trust staff for determining  
10 the interest rate for a mortgage." *Id.* ¶ 3. Daley further stated,

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21 *Id.* ¶ 4.  
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23 **III. LEGAL ANALYSIS**

24 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits  
25 corporations from making a contribution or expenditure in connection with any election to any  
26 political office. 2 U.S.C. § 441b(a). Candidates and political committees are also prohibited  
27 from knowingly accepting contributions from corporations. *Id.* The Obamas' loan from  
28 Northern Trust was procured for the purchase of the Obamas' new home in Chicago, as  
29 evidenced by the mortgage and closing documents attached to the complaint. Complaint, Ex. 2.

1 There is no factual information from the complaint, the responses, or the Stephens article, that  
2 funds from the mortgage were used "in connection with any election to any political office," a  
3 nexus required for a corporate contribution or expenditure to be prohibited under the Act.  
4 2 U.S.C. § 441b(a). This analysis is consistent with MUR 4944 (Hillary Clinton), where the  
5 Commission found no reason to believe that Senator Hillary Rodham Clinton, her Senate  
6 campaign committee and Washington Mutual Home Loans, Inc. (successor to PNC Mortgage  
7 Bank) violated 2 U.S.C. § 441b(a) in relation to a mortgage Hillary Rodham Clinton and former  
8 President Bill Clinton obtained for their home in Chappaqua, New York.<sup>2</sup> See also AO 1982-64  
9 (there are no consequences under the Act if candidate uses personal funds to repay loan that was  
10 obtained for personal expenses during campaign).

11 In addition, the loan is also not considered a prohibited corporate contribution. The Act  
12 states that the term "contribution" includes "any...loan...made by any person for the purpose of  
13 influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). An exception to this  
14 definition is a loan of money by a bank that is made in accordance with applicable law and in the  
15 ordinary course of business. 2 U.S.C. § 431(8)(B)(vii). A loan is considered in the ordinary  
16 course of business if it (1) bears the usual and customary interest rate of the lending institution  
17 for the category of loan involved; (2) is made on a basis that assures repayment; (3) is evidenced  
18 by a written instrument; and (4) is subject to a due date or amortization schedule. 11 C.F.R.  
19 § 100.82(a)(1)-(4). The Commission's regulations define "made on a basis that assures

<sup>2</sup> The MUR 4944 Statement of Reasons of Commissioners McDonald, Mason, Sandstrom, Smith and Thomas states "[i]t is undisputed that the money that PNC lent to the Clintons was used solely for the purchase of their new home. There is no indication that this loan "freed up" funds then used by Mrs. Clinton for campaign expenses." The SOR further draws an analogy between the mortgage and the Commission's personal use regulations, which classify mortgage payments as personal use, and notes that payments made to a candidate, irrespective of the candidacy, are not treated as a contribution. 11 C.F.R. § 113(g) (1) and (6). Further, it states that treating bank loans "for a candidate's home purchase or other personal living expenses as not "in connection with the campaign" and as made "irrespective of the candidacy" is well founded, in our view."

1 repayment" as, *inter alia*, when the lending institution making the loan has perfected a security  
2 interest in collateral owned by the candidate, the fair market value of the collateral is equal to or  
3 greater than the loan amount, and the candidate provides documentation of the perfected security  
4 interest. 11 C.F.R. § 100.82(e)(1)(ii).

5 Information provided in Northern Trust's response and the complaint shows the loan was  
6 made in accordance with applicable law and in the ordinary course of business. 2 U.S.C.  
7 § 431(8)(A)(i). Northern Trust's response and the loan documentation adequately address each  
8 of the four criteria for a loan to be made in the ordinary course of business, set forth in 11 C.F.R.  
9 § 100.82(a). First, the Obamas' loan bears the usual and customary interest rate of Northern  
10 Trust because the Obamas' were afforded a discount comparable to discounts given to other  
11 similarly situated borrowers. According to the affidavit of Karen Daley, 8 of the 14 mortgage  
12 loans comparable to the Obamas' loan at Northern Trust received discounts, \_\_\_\_\_

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14 \_\_\_\_\_ Daley Aff. ¶¶ 3, 4. The Obamas' loan was one of a majority of the  
15 comparable mortgages that received a discount, \_\_\_\_\_

16 \_\_\_\_\_ Daley Aff. ¶ 4. The  
17 \_\_\_\_\_ discount was within the range of the other mortgage discounts, \_\_\_\_\_

18 \_\_\_\_\_ See MUR 5198 (Cantwell)  
19 (interest rate for loan was usual and customary because 36 of 38 comparable lines of credit in a  
20 two-year period were at or below the rate offered to candidate) and MUR 5421 (Kerry) (interest  
21 rate was usual and customary because 48 of 52 comparable loans granted during a five-month  
22 period had the same interest rate as offered to candidate).

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1 Further, the Soto affidavit states that Northern Trust uses mortgage loans as a way to  
2 introduce new and potential clients to the institution and familiarize them with the other services  
3 that the institution provides. Soto Aff. ¶¶ 2, 5. According to the affidavit, the Obamas were  
4 offered a discounted rate because they had a competing interest rate offer, and Northern Trust  
5 anticipated receiving investment business from the Obamas. Soto Aff. ¶ 4. We have no  
6 information suggesting otherwise.

7 Second, the Obamas' mortgage was made on a basis that assures repayment because  
8 Northern Trust had a perfected security interest in the Obamas' \$1.65 million home as collateral  
9 for the \$1.32 million loan, according to the mortgage documents and response from Northern  
10 Trust. Finally, the Obamas' mortgage was evidenced by written instruments, the mortgage  
11 documents, and is subject to a due date of July 1, 2035, which fulfills the third and fourth  
12 requirements of 11 C.F.R. § 100.82(a). Thus, the Obamas' mortgage loan is not a prohibited  
13 corporate contribution because it falls under the exception for loans made in accordance with  
14 applicable law and in the ordinary course of business.

15 For all of these reasons, we recommend the Commission find no reason to believe that  
16 Northern Trust and Barack Obama violated 2 U.S.C. § 441b(a) and no reason to believe Barack  
17 Obama, Obama 2010, Inc. and Harvey S. Weinberg, in his official capacity as treasurer, and  
18 Obama for Illinois, Inc. and Harvey S. Weinberg, in his official capacity as treasurer,  
19 (terminated) violated 2 U.S.C. §§ 441b(a) and 434(b)(2).

20 **IV. RECOMMENDATIONS**


- 21 1. Find no reason to believe that Northern Trust Company, Inc., Barack Obama,  
22 Obama 2010, Inc. and Harvey S. Weinberg, in his official capacity as treasurer,  
23 and Obama for Illinois, Inc. and Harvey S. Weinberg, in his official capacity as  
24 treasurer, (terminated) violated 2 U.S.C. § 441b(a).  
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2. Find no reason to believe that Obama 2010, Inc. and Harvey S. Weinberg, in his official capacity as treasurer, and Obama for Illinois, Inc. and Harvey S. Weinberg, in his official capacity as treasurer, (terminated) violated 2 U.S.C. § 434(b)(2).
3. Approve the attached Factual and Legal Analyses.
4. Approve the appropriate letters.
5. Close the file.

Thomasenia P. Duncan  
General Counsel

12/18/08

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